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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY GREY RAMIREZ,

Defendant and Appellant.

B207435

(Los Angeles County
Super. Ct. No. VA099908)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Dewey L. Falcone, Judge. Affirmed and remanded.

Landra E. Rosenthal, under appointment by the Court of Appeal, for Defendant
and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General,
Lance E. Winters and Susan D. Martynec, Deputy Attorneys General, for Plaintiff
and Respondent.

Anthony Grey Ramirez appeals from the judgment entered following a jury trial in which he was convicted of murder (Pen. Code, § 187, subd. (a))¹ with the finding that he personally and intentionally used and discharged a firearm resulting in death during the commission of the crime (Pen. Code, § 12022.53, subds. (b), (c), and (d)). He was sentenced to prison for 15 years to life on the murder count, plus an additional term of 25 years to life for the firearm enhancement found true pursuant to Penal Code section 12022.53, subdivision (d). The enhancements found true within the meaning of subdivisions (b) and (c) were ordered stricken. Appellant contends the trial court erred in imposing an unauthorized sentence in that he was entitled to presentence custody credits pursuant to Penal Code section 2900.5. Respondent asserts the trial court erred in striking the firearm enhancements rather than staying them. For reasons stated in the opinion, we affirm the conviction and remand the matter to the trial court for resentencing.

FACTUAL AND PROCEDURAL SUMMARY

Appellant does not contest the sufficiency of evidence to support his conviction. It will suffice to observe that on March 4, 2007, after receiving and returning phone calls from and to appellant, Charles Castorena drove to a liquor store where he picked up appellant. While stopped at a gas station and while Castorena stood outside his vehicle pumping gas, appellant, who was sitting in the back seat of Castorena's vehicle, shot and killed Castorena.²

DISCUSSION

I

During sentencing, both counsel advised the court that credits could not be given on a life sentence, "even on a determin[ate] sentence." Appellant now contends the trial

¹ Pursuant to stipulation, it was agreed the murder was in the second degree.

² The forensic pathologist who performed the autopsy testified the victim died some days later from acute bronchial pneumonia, which was caused by the gunshot wounds and resulting paralysis.

court erred in failing to award him presentence custody credits pursuant to Penal Code section 2900.5. Respondent agrees.

Appellant was arrested on March 4, 2007, and sentenced on March 28, 2008. He was entitled to actual custody credit under Penal Code section 2900.5, subdivision (a), which provides in part: “In all felony and misdemeanor convictions . . . when the defendant has been in custody, including, but not limited to, any time spent in a jail . . . , all days of custody of the defendant . . . shall be credited upon his or her term of imprisonment.” (See *People v. Taylor* (2004) 119 Cal.App.4th 628, 645.)

Appellant correctly is not claiming presentence conduct or worktime credits under Penal Code section 4019. He recognizes and does not dispute that because he was convicted of murder, under Penal Code section 2933.2, subdivision (c) he is not entitled to these credits.³ The record supports the conclusion appellant is entitled to presentence custody credits for the period he spent in county jail from the date of his arrest to and

³ Penal Code section 4019 provides in pertinent part: “(a) The provisions of this section shall apply in all of the following cases: . . .

(4) When a prisoner is confined in a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp following arrest and prior to the imposition of sentence for a felony conviction.

(b) Subject to the provisions of subdivision (d), for each six-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from his or her period of confinement unless it appears by the record that the prisoner has refused to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(c) For each six-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from his or her period of confinement unless it appears by the record that the prisoner has not satisfactorily complied with the reasonable rules and regulations established by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

Penal Code section 2933.2, subdivision (c) provides, “Notwithstanding Section 4019 or any other provision of law, no credit pursuant to Section 4019 may be earned against a period of confinement in, or commitment to, a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp, following arrest for any person [who is convicted of murder].”

including the date he was sentenced, for a total of 391 days.⁴ “A sentence that fails to award legally mandated custody credit is unauthorized and may be corrected whenever discovered. [Citation.]” (*People v. Taylor, supra*, 119 Cal.App.4th 628, 647.)

II

Respondent correctly observes the trial court erred in striking two of the firearm enhancements. The trial court imposed 25 years to life for the firearm enhancement under Penal Code section 12022.53, subdivision (d) and struck the two remaining enhancements under subdivisions (b) and (c). In *People v. Gonzalez* (2008) 43 Cal.4th 1118, 1130, our Supreme Court recently concluded Penal Code section 12022.53 “requires that, after a trial court imposes punishment for the section 12022.53 firearm enhancement with the longest term of imprisonment, the remaining section 12022.53 firearm enhancements . . . that were found true for the same crime must be imposed and then stayed.” We will remand the matter to the trial court to impose and stay the firearm enhancements previously stricken.

⁴ The year 2008 was a leap year with February having 29 days.

DISPOSITION

The conviction is affirmed and the matter is remanded to the trial court to impose and stay the enhancements pursuant to Penal Code section 12022.53, subdivisions (b) and (c) previously stricken and further to award presentence custody credits of 391 days. The trial court is directed to prepare a corrected abstract of judgment and to forward a certified copy to the Department of Corrections and Rehabilitation.

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.